

**REMARKS**

Claims 1, 4, 6, 8, 10, 12 and 13 are all the claims pending in the application.

Initially, the Examiner is respectfully requested to indicate that the drawings submitted on January 26, 2004 have been accepted.

**I. Response to Rejection of Claims 1, 4, 6, 8, 10, 12 and 13 under 35 U.S.C. § 103(a)**

Claims 1, 4, 6, 8, 10, 12 and 13 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Seto et al. (5,560,888) in view of Komatsu et al. (US 2002/0031844).

Applicants respectfully traverse the rejection.

Independent claim 1 is directed to an incubator for accommodating and holding, at a predetermined constant temperature, a dry analysis element spotted with a sample, the incubator comprising: an upper block and a lower block for sandwiching therebetween the dry analysis element, wherein both of the upper and lower blocks are movable toward and away from each other, wherein a heater is provided only for the lower block and the temperature of the heater is adjusted, wherein the upper block and the lower block are brought into contact with each other, and the upper block is preheated by heat transferred from the lower block before introducing the dry analysis element therebetween, and wherein the dry analysis element is accommodated between the upper block and the lower block, the dry analysis element is sandwiched between the upper block and the lower block and heated by heat from both of the upper block and the lower block.

Seto relates to a biochemical analysis apparatus and incubator for the same. The Examiner directs Applicants' attention to Figures 4, 5 and 13, and asserts that the device includes a film retainer 61, a lower disk 45, a heater 48, which contacts both blocks, and a cover 46 with insulating materials 51 and 52 having a recess opening 59. In addition, the

Examiner asserts that the upper block and lower block are brought into contact to hold and incubate an analysis slide.

Claim 1 recites "a heater is provided **only** for the lower block" (emphasis added). As noted by the Examiner, Seto discloses a heater 48, which contacts **both** the upper and lower blocks.

Thus, Seto does not disclose the present invention according to claim 1.

In addition, the Examiner acknowledges that Seto does not teach that the lower block is moveable toward and away from the upper block. To make up for the deficiencies of Seto, the Examiner relies on Komatsu. The Examiner asserts that it would have been obvious to one of ordinary skill in the art to combine the movable lower plate from Komatsu with the incubator of Seto to provide the maximum compression contact for the dry analysis element held between the two heating blocks as well as to put the analyzing probe in contact with the analysis element.

It is respectfully submitted that there is no motivation to combine Seto and Komatsu. As noted by the Examiner, Komatsu discloses a support member 275 that is movable by an elevating mechanism 276. However, the support member 275 is lowered so that the probes 278 can be in contact with the dry analysis chip 203. There is no desire in Komatsu to contact the support member 275 and, for example, chip chamber 277 in a manner such that there is compression between support member 275 and chip chamber 277. The mechanism of Komatsu is simply directed to a way of contacting the probes located below the analysis chip 203 with the analysis chip 203. In addition, the support member of Komatsu is not heated.

Thus, one of ordinary skill in the art would not be motivated to modify Seto by providing a moveable lower plate. Particularly, Seto discloses that the film retainer 61 is moveable and slidable relative to the cell cover 64, and the cell cover 64 is pressed against the upper surface

of the lower disk 45 to tightly enclose therein the frameless chemical analysis film 1, and Komatsu does not disclose a moveable lower support for the purpose of compressing a dry analysis element with an upper support but for the purpose of contacting the dry analysis element with measuring probes.

For at least the above reasons, it is respectfully submitted that a *prima facie* case of obviousness has not been established and that claims 1, 4, 6, 8, 10, 12 and 13 are patentable over the cited art.

Accordingly, withdrawal of the rejection is respectfully requested.

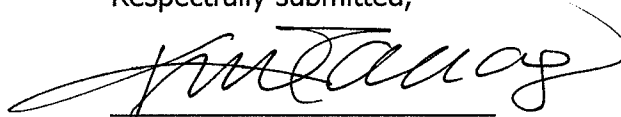
**II. Conclusion**

For the foregoing reasons, reconsideration and allowance of claims 1, 4, 6, 8, 10, 12 and 13 is respectfully requested.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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